



Signed and Filed: June 02, 2010

A handwritten signature in dark ink, appearing to read "T. E. Carlson", is written over a horizontal line.

THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re)	Case No. 09-31130 TEC
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ONE VISION PARK, INC.,)	Chapter 11
)	
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)	
)	
)	
Debtor.)	
)	

**MEMORANDUM DECISION RE DEBTOR'S MOTION TO USE ESTATE FUNDS TO
COMPENSATE MICHAEL BOHANNON AS CLAIMS REVIEWER**

On May 21, 2010, the court held a hearing on Debtor's motion to use estate funds to compensate Michael Bohannon as claims reviewer (the Motion). Peter W. Ito appeared for Debtor. Christopher Kuhner appeared for the Unsecured Creditors Committee. John Elstead appeared for Michael Ohayon. Upon due consideration, the court hereby grants the Motion. This memorandum decision shall constitute the court's findings of facts and conclusions of law.

FACTS

On May 29, 2009, the United States Trustee appointed David Bohannon, Dean Delis, and five other holders of prepetition claims to the Official Committee of Unsecured Creditors.

1 On August 27, 2009, MD Mortgage Direct filed claim nos. 25 and
2 26 against the estate (collectively, the MD Direct Claims). Claim
3 no. 25 is an unsecured claim in the sum of \$177,000. Claim no. 26
4 is an unsecured claim in the sum of \$300,000. MD Mortgage Direct
5 is a California corporation of which Dean Delis is president,
6 secretary, and sole shareholder.

7 On November 9, 2009, the court signed an order denying
8 Debtor's motion to employ Steve Jaca and Mr. Delis as claims
9 reviewers under section 327, but authorizing Debtor to use estate
10 funds, pursuant to section 363, to pay Mr. Delis and Mr. Jaca to
11 assist Debtor in its review of claims.

12 In the present Motion, Debtor seeks authority, under section
13 363(b) to pay Mr. Bohannon \$150 per hour for his services in
14 reviewing the MD Direct Claims. Debtor seeks to employ Mr.
15 Bohannon to review those claims to avoid any conflict of interest
16 in having Mr. Delis review the MD Direct Claims, and because Debtor
17 believes Mr. Bohannon is a neutral, impartial third party. In
18 support of the Motion, Mr. Bohannon filed a declaration stating
19 that he has information essential to Debtor's review and analysis
20 of the MD Direct Claims.

21 Debtor does not seek to employ Mr. Bohannon as a professional
22 pursuant to section 327.

23 Michael Ohayon filed opposition to the Motion, arguing that
24 Mr. Bohannon should not be employed to review the MD Direct Claims,
25 because Mr. Bohannon is not disinterested, and because he has no
26 special knowledge that would assist Debtor in reviewing the MD
27 Direct Claims.

28

MEMO RE BOHANNON MOTION

1 **LAW**

2 Section 363(b) provides that a bankruptcy court may authorize
3 a debtor to "use . . . , other than in the ordinary course of
4 business, property of the estate." A debtor who wants to use funds
5 from the estate for a transaction outside the ordinary course of
6 business must obtain advance approval from the bankruptcy court.
7 E.g., In re 240 North Brand Partners, Ltd., 200 B.R. 653, 659 (9th
8 Cir. BAP 1996). The bankruptcy court must find a valid business
9 justification for the expenditure. Id.

10 The court determines that Debtor and the Committee have a
11 valid business reason for using estate funds to pay Mr. Bohannon to
12 review the MD Direct Claims, because Mr. Bohannon is a neutral
13 third party who has essential information to Debtor's review and
14 analysis of the those claims, and because the claims-review service
15 Mr. Bohannon is providing is not a service typically performed by a
16 member of a creditors' committee. Thus, it is appropriate to allow
17 Debtor to pay Mr. Bohannon for performing this service.

18 Allowing Debtor to use estate funds to compensate Mr. Bohannon
19 at a rate of \$150 per hour for his review of the MD Direct Claims
20 satisfies an important bankruptcy policy of minimizing costs of
21 administration, because \$150 per hour is significantly less than
22 the hourly rate that would otherwise be charged for those services
23 by counsel for Debtor, the Committee, or their paralegals. See In
24 re Jenkins, 188 B.R. 416, 420 (9th Cir. BAP 1995). Equally
25 important, Debtor is seeking prior authority to expend the funds,
26 thus enabling the court to police the use of estate funds for
27 services performed for the estate.

28 Mr. Bohannon need not be disinterested to be compensated for
his services under section 363, because Mr. Bohannon is not a

1 professional. The functions he will be performing for the estate
2 are reviewing the documentation supporting the MD Direct Claims and
3 perhaps asking MD Mortgage Direct to reduce its claims. Mr.
4 Bohannon does not have any final settlement authority with respect
5 to the claims. It is the professionals employed by the Debtor and
6 the Committee who will recommend to Debtor and the Committee what
7 course to take regarding the MD Direct Claims.

8 The use of estate funds to compensate Mr. Bohannon for the
9 services in question is not inconsistent with section 503(b)(3),
10 which provides that members of a committee may be paid their
11 expenses but no compensation, because the services in question go
12 well beyond the services typically performed by members of a
13 creditors committee. E.g., U.S. Trustee v. Bethlehem Steel Corp.
14 (In re Bethlehem Steel Corp.), 2003 WL 21738964 (S.D.N.Y. 2003).

15 For the reasons set forth above, the court determines that
16 Debtor has a valid business reason for paying Mr. Bohannon for his
17 services with respect to the MD Direct Claims, and that Debtor may
18 use estate funds to pay Mr. Bohannon compensation for his services
19 at the rate of \$150 per hour, subject to court approval after
20 notice and opportunity for objection by creditors.

21 ****END OF MEMORANDUM****

1 COURT SERVICE LIST

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MEMO RE BOHANNON MOTION